

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY MOSCOW IMMEDIATE

C O N F I D E N T I A L STATE 129996

E.O. 11652: GDS

TAGS: TOCY, UR, US

SUBJECT: R/V WESTERN VIKING MARINE MAMMAL RESEARCH

REF: (A) MOSCOW 11185 (B) STATE 125279

1. DEPT. DOES NOT WISH TO GET INTO 200 MILE ISSUE NOR LOS
MSR ISSUE IN CONNECTION WITH THIS CLEARANCE REQUEST. ONLY
SPECIFIC MENTION OF JURISDICTIONAL AREA IN REF (B) WAS
"WITHIN TWO MILES TO SOVIET COAST", WHICH PLACES REQUESTED
CLEARANCE WITHIN U.S. RECOGNIZED 3 MILE TERRITORIAL SEA
AND THUS JUSTIFIES CLEARANCE REQUEST, REGARDLESS OF ANY
OTHER JURISDICTIONAL CONSIDERATIONS.

2. FISHERY CONSERVATION AND MANAGEMENT ACT (FCMA)
SPECIFICALLY EXCLUDES BOTH MARINE MAMMALS AND SCIENTIFIC
RESEARCH. ON OTHER HAND MARINE MAMMAL ACT ASSERTS U.S.
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JURISDICTION OVER MARINE MAMMALS WITHIN 200 MILES,
INCLUDING SCIENTIFIC RESEARCH, BUT IT DOUBTFUL THAT ACT
APPLIES IN CASES OF TYPE OF RESEARCH DESCRIBED FOR WESTERN
VIKING, I.E. RESEARCH PRIMARILY VISUAL WITH PERHAPS SOME
WATER SAMPLES BEING TAKEN. FURTHERMORE, WE ARE NOT AWARE
OF SOVIET ASSERTION OF 200 MILE RESEARCH JURISDICTION.
ON OTHER HAND, PROPOSED RESEARCH CLEARLY FALLS WITHIN BOTH

U.S. AND SOVIET VIEWS OF TERRITORIAL SEA RESEARCH JURIS-

DICTION. WE WISH PURSUE CLEARANCE REQUEST WITHOUT BEING SPECIFIC AS TO WHAT TYPE OF JURISDICTION IT COMES UNDER, SINCE ENTERING INTO JURISDICTIONAL QUESTIONS AT THIS TIME WILL SERVE NO USEFUL PURPOSE.

3. LOS ISSUE DOES NOT DIRECTLY APPLY SINCE IT IS A QUESTION OF NATURE AND SCOPE OF MSR JURISDICTION WITHIN 200 MILES, NOT QUESTION OF WHETHER LOS TREATY WOULD PROVIDE FOR SUCH JURISDICTION. MOREOVER, THERE ARE VALID SCIENTIFIC REASONS UNDER BOTH ENVIRONMENTAL AGREEMENT AND IWC SCIENTIFIC RESEARCH PROGRAM WHICH SHOULD MAKE RESEARCH OF INTEREST TO SOVIETS.

4. NOAA RESEARCH LAST SUMMER REFERRED TO IN REF (B) WAS OF A DIFFERENT ILK. ALTHOUGH IT MIGHT HAVE BEEN CONSTRUED AS FISHERIES RESEARCH THIS WOULD HAVE BEEN A STRAINED INTERPRETATION, AND IN ANY EVENT IT DID NOT APPEAR AT THE TIME THAT SOVIETS WERE ASSERTING JURISDICTION OVER MSR TO 200 MILES. MORE IMPORTANTLY, RESEARCH INVOLVED BOTTOM MOUNTED CURRENT METER ARRAYS. WHILE WE DID NOT CONSIDER THIS CONSTITUTED CONTINENTAL SHELF RESEARCH UNDER 1958 CONVENTION, IN VIEW OF SOVIET SENSITIVITY CONCERNING CONTINENTAL SHELF RESEARCH DEPT. WISHED TO ENSURE SOVIETS KNEW OF RESEARCH AND DID NOT RAISE ANY OBJECTIONS, THUS CONFIDENTIAL

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HEADING OFF ANY POSSIBLE TROUBLE. HENCE NOTIFICATION TO SOVIETS.

5. IF IT NOW APPEARS THAT SOVIETS ARE ASSERTING 200 MILE MSR JURISDICTION, PLEASE ADVISE IMMEDIATELY OF PARTICULARS. TO DEPT'S KNOWLEDGE 200 MILE CLAIM PERTAINS TO FISHERIES ONLY. EVEN IF SOVIETS ARE ASSERTING 200 MILE MSR JURISDICTION, TERRITORIAL SEA ASPECT MENTIONED ABOVE COVERS REQUEST, AND RECOGNITION QUESTION DOES NOT ARISE IF REQUEST PRESENTED CAREFULLY. THUS, DEPT SUGGESTS SUBSTANTIVE PORTION DIPLOMATIC NOTE READ AS FOLLOWS.

6. QTE: THE R/V WESTERN VIKING, CHARTERED BY THE U.S. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, WILL BE CONDUCTING SCIENTIFIC RESEARCH CONCERNING THE BOWHEAD WHALE IN THE NORTHERN BERING AND SOUTHERN CHUKCHI SEAS DURING THE PERIOD JUNE 15 THROUGH JULY 20, 1978. THE PURPOSE OF THE RESEARCH IS TO LOCATE THE WHALES, DEFINE THEIR DISTRIBUTION IN THE SUMMER SEASON, AND STUDY THEIR FEEDING BEHAVIOR. THIS RESEARCH RELATES TO OTHER COOPERATIVE RESEARCH WHICH IS BEING CONDUCTED IN THE REGION DURING THE SUMMER PURSUANT TO THE U.S.-U.S.S.R. ENVIRON-

MENTAL AGREEMENT AND IS PART OF THE RESEARCH PROGRAM ON THE BOWHEAD WHALE APPROVED IN DECEMBER BY THE INTERNATIONAL WHALING COMMISSION.

A SOVIET SCIENTIST IS INVITED TO PARTICIPATE IN THIS MOST INTERESTING AND IMPORTANT SCIENTIFIC PROGRAM, WHICH HAS PREVIOUSLY BEEN DISCUSSED WITH SOVIET SCIENTISTS DURING WORKING MEETINGS PURSUANT TO OUR BILATERAL ENVIRONMENTAL AGREEMENT. AS IS CUSTOMARY IN SUCH RESEARCH PROGRAMS, ALL DATA AND RESULTS OF THE RESEARCH WILL BE FREELY SHARED.

THE BOWHEAD WHALE RESEARCH PROGRAM IS DESIGNED TO DETERMINE THE NUMBER OF WHALES IN THE POPULATION, WHICH IS AN IMPORTANT CONSIDERATION TO FURTHER ACTION TO BE TAKEN BY
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THE INTERNATIONAL WHALING COMMISSION. INFORMATION REQUIRED INCLUDES THE SPATIAL AND TEMPORAL EXTENT OF THEIR DISTRIBUTION FROM APRIL THROUGH JULY.

THE ONLY EQUIPMENT WHICH WILL BE USED IN THE RESEARCH PROGRAM ARE BINOCULARS, INCLINOMETERS, AND CAMERAS. IN ADDITION, IF WHALES ARE OBSERVED IN THE PROCESS OF FEEDING IT IS POSSIBLE THAT WATER SAMPLES WILL BE TAKEN IN AN EFFORT TO DETERMINE THE FOOD SOURCE.

THE CHIEF SCIENTIST FOR THE PROGRAM IS DR. HOWARD W. BRAHAM OF THE NORTHWEST FISHERIES CENTER OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION. HE WILL BE SUPPORTED BY A SCIENTIFIC PARTY OF SIX. THE MASTER OF THE WESTERN VIKING IS JOHN JAFTOD AND THE VESSEL HAS A CREW OF FOUR. THE VESSEL IS 199 GROSS TONS, 102 FEET LONG, WITH A 13 FOOT DRAFT. THE RADIO CALL SIGN FOR THE WESTERN VIKING IS WYC 5250 AND THE VESSEL MONITORS EMERGENCY FREQUENCIES.

EVIDENCE FROM HISTORICAL COMMERCIAL WHALING RECORDS STRONGLY INDICATES THAT THE BOWHEADS WERE MORE PREVALENT OFF THE SOVIET COAST THAN OFF THE UNITED STATES COAST. THUS, IT IS IMPERATIVE TO THE SUCCESS OF THIS RESEARCH PROGRAM TO EXPLORE THE CORRIDOR BETWEEN ST. LAWRENCE ISLAND AND THE SOVIET MAINLAND TO THE BERING STRAIT AND THEN NORTHWEST INTO THE CHUKCHI SEA TO OBSERVE THE PRESENCE OF BOWHEAD WHALES. IT WOULD BE APPRECIATED IF THE NECESSARY PERMISSION WOULD BE GRANTED FOR THE RESEARCH PROGRAM TO EXTEND INTO SOVIET WATERS IN THE AREA DESCRIBED ABOVE. END QUOTE.

7. IN PRESENTING THE NOTE THE EMBASSY SHOULD AVOID DIS-
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CUSSING 200 MILES PER SE IN CONNECTION WITH THIS CLEARANCE REQUEST. EMBASSY SHOULD, HOWEVER, ACKNOWLEDGE THAT THE REQUEST IS LATER THAN NORMAL, POINTING OUT THAT THIS WAS CAUSED BY THE FACT THAT THE CHARTER HAS JUST BEEN ARRANGED. HOWEVER, THE RESEARCH PROGRAM IS NOT NEWS TO

THE SOVIETS, HAVING BEEN DISCUSSED BOTH UNDER THE ENVIRONMENTAL AGREEMENT AND IN THE IWC. SINCE THE SOVIETS ARE AWARE OF THE IMPORTANCE OF THE PROGRAM AND THE TIMELINESS OF CARRYING IT OUT THIS SUMMER, WE TRUST THEY WILL ACT FAVORABLY AND EXPEDITIOUSLY ON OUR REQUEST.

8. IT IS POSSIBLE THAT PART OF THE CONFUSION IN THIS CASE RESULTS FROM THE NECESSITY OF A PERMIT FOR THE PROGRAM OF THE SOVIET VESSEL ZUBAREVO ENGAGED IN MARINE MAMMAL RESEARCH OFF PT. BARROW (MOSCOW 10765). UNFORTUNATELY THE LETTER TRANSMITTED IN STATE 80804 COULD EASILY BE TAKEN TO IMPLY A REQUIREMENT FOR A PERMIT FOR ANY RESEARCH WITHIN THE U.S. 200 MILE FISHERY ZONE, INSTEAD OF THE VERY NARROW REQUIREMENT OF THE MARINE MAMMALS ACT FOR A PERMIT WHEN TAKING MARINE MAMMALS WITHIN 200 MILES EVEN FOR SCIENTIFIC PURPOSES. AS HAS BEEN POINTED OUT NUMEROUS TIMES, THE FCMA SPECIFICALLY EXCLUDES SCIENTIFIC RESEARCH.

9. MENTION OF 160 DEGREES IN PARA 2 REF (B) SHOULD BE 169 RPT 169 DEGREES. VANCE

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